IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPLICATION NO.17 OF 1999

The Commissioner of Income Tax,
'Aayakar Bhavan', 31-C/2,
'E' Ward, Tarabai Park,
Kolhapur. ...Applicants.

V/s.

Shri Datta Shetkari Sahakari
Sakhar Karkhana Ltd., Shirol,
Dist. Kolhapur ...Respondents.

Dr.P.Daniel with G.Hariharan for the Applicants.
None for the Respondent.

CORAM: DR.S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 9th August, 2005.

JUDGMENT: (Per J.H.Bhatia,J.)

1. By this Application, the Applicant seeks direction to the Income Tax Appellate Tribunal to state and refer following questions of law arising out of the order of the Tribunal dated 5.12.1997.

> (1)"Whether on the facts and in the circumstances of the case and in law, the I.T.A.T. was justified in holding that the Government Audit Fees payable by the Respondent is not a duty cess or Tax as envisaged in Section 43-B, when ultimately such

payment goes to the State Treasury ?"

(2)"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to allow the payment towards P.F., F.P., and Admn. charges under section 43-B if found made "or on or before the date of filing of return....", when second proviso to Section 43-B read with section 36(1)(va) clearly requires disallowance of any payment made beyond due date of any payment under the relevant Act ?"

2. Heard the learned counsel for the Applicant. We have carefully perused the order dated 5.12.97 passed by the Tribunal whereby the Tribunal held that the Government Audit Fees payable by the Respondent is an expenditure and is liable to be deducted from the income and the Tribunal remanded the matter back to the Assessing Officer to verify the dates of payments as far as payments towards P.F., F.P. and

Administrative charges are concerned. The Respondent is the Co-operative Sugar Factory. The Government requires accounts of co-operative societies to be compulsorily audited by the Government Auditor and for that purpose, co-operative society has to make payment of certain fees. It is certainly not duty cess or tax. Therefore, the audit fee is liable to be deducted as expenses from the income. The Appellate Tribunal relied upon the authority of **Patna High Court** in the matter of **Jamshedpur Motor Accessories (189 ITR 70)** and Calcutta High Court in the matter of **Jagannath Steel Corporation (191 ITR 676)** and came to a conclusion that if the payments on account of Provident fund, Family Pension and Administrative charges are made within the prescribed time limit laid down under the relevant act or on or before the date of filing the returns of the respective years, such payments are allowable as deductions under section 43B of the Income Tax Act. In view of this, the Tribunal has restored the matter to the file of Assessing Officer with the direction to verify the dates of payments and to adjudicate the matter. By the order dated 10.8.98, the Income Tax Appellate Tribunal, while rejecting the Application for making reference to this Court, observed that its findings are now squarely covered by the judgments of the Supreme Court

in **Allied Motors (P) Ltd. v. Commissioner of Income Tax (224 ITR 677 - SC).**

3. In view of the facts and legal position set out by the Appellate Tribunal in the aforesaid two orders, we do not find any substantial question of law. In the result, the Application stands dismissed.

(DR.S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)